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in the

# Supreme Court

of the

# United States

NO. 77-1739

OCTOBER TERM, 1977

PAUL MARK RYAN,
ARTHUR T. MCMANMON, JAMES M. CONNOLLY
Trustees of the EDWARD C. DONNELLY, JR.
REVOCABLE TRUST,

*Petitioners,*

*v.*

MARY ELIZABETH DONNELLY,

*Respondent.*

## ON PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

## REPLY TO BRIEF OF RESPONDENT IN OPPOSITION

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*July, 1978*

## INDEX


| | Page |
|---|---|
| QUESTION PRESENTED | 2 |
| STATEMENT OF THE CASE | 3 |
| ARGUMENT | 4 |

## AUTHORITIES


**Cases:** **Page**

*Bennett v. Bennett,*
157 Fla. 627, 26 So.2d 650 (1946) ..... 4

*Bowler v. Bowler,*
159 Fla. 447, 31 So.2d 751 (1947) ..... 4

*Griley v. Griley,*
43 So.2d 350 (Fla. 1949) ..... 4

*Henderson v. Usher,*
125 Fla. 709, 170 So. 846 (1936) ..... 4

*In Re Ginsberg's Estate,*
50 So.2d 539 (Fla. 1951) ..... 4

*Murphy v. Murphy,*
125 Fla. 885, 170 So. 868 (1939) ..... 4

**Constitutional Provision:**

Fourteenth Amendment, United States Constitution . 5




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# REPLY TO BRIEF OF RESPONDENT IN OPPOSITION

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## QUESTION PRESENTED

The respondent, Mrs. Donnelly, has not challenged the substance of the question presented by the petitioner. She merely uses this section of her brief to argue why the Court should not consider the question presented.

In reply to her arguments:

(1) The question presented warrants review by this Court because it is a federal constitutional question dealing with a fundamental issue of jurisdiction by one state's court over another state's court on which there is a clear and express conflict between the circuit courts of appeal of the United States. See pages 12-13 of the petition.

(2) That the question presented "has already been resolved by the state trial court" is not an argument why the petition should be denied but is merely a precondition for this Court to accept jurisdiction and to review the state court's decision.

(3) The question presented in this case was decided adversely to the petitioners because the trial court and the district court of appeal totally ignored that the respondent's cause of action could not possibly have arisen out of the petitioners' alleged activities in the state. The order of the trial court shows on its face that every single act of the petitioners allegedly constituting the doing of business in Florida occurred after the death of Mr. Donnelly, the time at which Mrs. Donnelly's cause of action for dower necessarily arose.



## STATEMENT OF THE CASE

The first sentence of the first paragraph of the respondent's statement of the case refers to her "*claim* of an ownership right"; the first sentence of the second paragraph of the respondent's statement of the case refers to her "ownership right." This convenient shift from a *claim* of ownership to an assertion of an established ownership right underlies the respondent's attempt to avoid the federal constitutional issue raised in this petition by redefining the cause of action for dower stated in her complaint into some other type of action that might arguably be said to have arisen after the death of Mr. Donnelly.

There can only be one purpose for such an unsupportable shift: to overcome the complete failure of the Florida courts to recognize that the respondent's cause of action for dower could not possibly have arisen out of the petitioners' alleged activities in the state. The ultimate goal is to vest the Florida rather than the Massachusetts courts with jurisdiction over this matter.

## ARGUMENT

The following points are presented in response to the argument made by the respondent:

(1) Mrs. Donnelly's complaint unambiguously states that it is a claim "for a dower interest in all assets held or claimed to be held by the Trustees under the Edward C. Donnelly, Jr. Revocable Trust." See page App. 49 of the petition. The very essence of her claim is to determine whether she has any interest in the assets held in Massachusetts by Massachusetts residents because of the death of her husband. Without the death of her husband she would have no claim whatsoever.

There can be no question, therefore, that the respondent's cause of action arose out of and at the time of Mr. Donnelly's death. Florida law is clear that dower rights become vested only upon death and that all claims for dower relate back to the time of death. *In re Ginsberg's Estate*, 50 So.2d 539 (Fla. 1951); *Griley v. Griley*, 43 So.2d 350 (Fla. 1949); *Bowler v. Bowler*, 159 Fla. 447, 31 So.2d 751 (1947); *Bennett v. Bennett*, 157 Fla. 627, 26 So.2d 650 (1946); *Henderson v. Usher*, 125 Fla. 709, 170 So. 846 (1936); *Murphy v. Murphy*, 125 Fla. 885, 170 So. 868 (1939). The trial court and the district court of appeal totally ignored this in their decision to retain jurisdiction. See pages App. 1 - App. 2 and App. 8 - App. 16 of the petition.

(2) The order of the trial court refusing to dismiss the case for lack of jurisdiction over the person shows on its face that all of the activities of the petitioners allegedly constituting the doing of business in Florida occurred after the death of Mr. Donnelly. See pages 10 - 11 of the petition. It is not these findings of fact that are challenged by the present petition but, rather, the unconstitutional refusal of the court to recognize that the respondent's cause of action for dower must have arisen out of the alleged activities in the state before the court could have jurisdiction.



(3) This issue of jurisdiction was clearly raised before the Third District Court of Appeal. See pages App. 48 - App. 53 of the petition. Indeed, it was the main thrust of the petitioner's appeal to the Third District.

Furthermore, there was no way in which either the trial court or the Third District could escape ruling on the constitutional issue; it was inherent and central to the motion to dismiss and the subsequent appeal. There is no "adequate independent non-federal ground" upon which those courts could base their decision to accept jurisdiction in this case without running afoul of the Fourteenth Amendment to the United States Constitution.

Respectfully submitted,

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